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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 632

AURORA G. TAMEZ, INDEPENDENT EXECUTRIX OF THE ESTATE OF R. I. TAMEZ, DECEASED, PETITIONER

v.

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The judgment of the District Court, entered after trial by jury, is contained in the Record (R. 40-47). The opinion of the Court of Appeals (R. 54) is reported at 177 F. 2d 639.

JURISDICTION

The judgment of the Court of Appeals was entered on November 22, 1949 (R. 55), and the order

denying rehearing was entered on January 27, 1950 (R. 60). The petition for a writ of certiorari was filed on February 25, 1950. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Whether the court below properly affirmed the action of the district court:

1. In taking jurisdiction over a suit for restitution of overcharges in rents under Section 205(a) of the Emergency Price Control Act of 1942, as amended, after expiration of that Act;

2. In declining to consider the correctness and validity of petitioner's maximum rents under the Housing and Rent Act of 1947, as amended, where petitioner had failed to resort to administrative remedies; and

3. In declining to consider as proper defenses to suit for restitution by the Housing Expediter whether the tenants were agreeable to payment of unlawful rents, and whether the addition of services and equipment justified higher rents where petitioner neither sought nor obtained authority therefor.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended (50 U.S.C. App. 901 et seq.), the Housing and Rent Act of 1947, as amended (50 U.S.C. App. 1881 et seq.), the Rent Regulation for Housing (8 F.R. 7322) and the Con-

trolled Housing Rent Regulation (12 F.R. 4331) are set forth in the Appendix, *infra*, pp. 12-18.

STATEMENT

Petitioner is the owner and operating landlord of housing accommodations subject to rent control and located in San Antonio, Texas. The present proceeding has its origin in a complaint filed by the Housing Expediter (R. 2) charging violation of both the Emergency Price Control Act of 1942 (hereinafter called "the Act of 1942"), and the Housing and Rent Act of 1947, as amended (hereinafter called "the Act of 1947"). In this action the Housing Expediter prayed for restitution to various tenants of rental overcharges applicable to the period February 1, 1945 to March 20, 1948 (R. 5) and judgment for three times all overcharges received prior to July 1, 1947 and within one year before suit, less any restitution allowed for such period (R. 4). Petitioner filed a motion to dismiss the complaint (R. 6-7) which was overruled (R. 40). Petitioner next filed his answer to the complaint (R. 8-25) in which he contended, so far as is here pertinent, that the district court lacked jurisdiction to entertain an action for restitution under the Act of 1942, which had theretofore expired (R. 8); that the Housing Expediter was barred by a one-year statute of limitations and laches from seeking restitution for violations occurring prior to March 11, 1947 (one year before suit was instituted) (R. 9); and that the maximum

rents established by the Act of 1947, as amended, were arbitrary, unreasonable, and unconstitutional (R. 23). Additional portions of the answer, subsequently stricken by the trial court (R. 40), contained the assertions that the tenants were willing to pay higher than maximum rents and did not seek restitution (R. 11); that additional services and equipment were added to some of the housing accommodations (R. 11, 12); and that the unauthorized rentals were reasonable in relation to units in other properties of equal or less value (R. 12). Respondent moved to strike these additional objections on the ground that petitioner had not exhausted his administrative remedies in connection with the challenge to the validity of the maximum rents and was precluded from challenging, in the trial court, the validity of the maximum rents (R. 32); and that whether or not the tenants desired restitution was immaterial to recovery (R. 31). Thereafter, in a so-called "Trial Amendment", petitioner added the objections that the maximum rents as specified by the Housing Expediter were incorrect; and that the specified maximum rentals under the Act of 1947 were invalid since they would not have survived attack in the United States Emergency Court of Appeals (R. 27). The trial court granted respondent's motions to strike the described additional objections set forth in the answer and "Trial Amendment" (R. 40) and trial of the cause was then had before a jury. Upon spe-

cial issues submitted to it (R. 37), the jury returned a verdict for respondent in which it found from a preponderance of the evidence that rents received by the petitioner from various tenants were in excess of the established maximum rentals applicable to their accommodations (R. 42). The jury also found, with the exception of one bonus overcharge, that the overcharges were wilful and the result of failure to take practicable precautions (R. 42). Based upon such findings, the trial court entered judgment for double damages in the amount of $579 and restitution to the tenants totaling $2,268.08 (R. 46-47).

Upon appeal, the Court of Appeals affirmed, without an opinion, the judgment of the trial court (R. 55).

ARGUMENT

The decision of the court below is correct, and there is no conflict of decisions. The questions which petitioner seeks to raise have been firmly settled by the decided cases.

1. Petitioner urges that the lower court lacked jurisdiction over a suit for restitution of overcharges under the Act of 1942 after expiration of that Act (Pet. 2).

Contrary to petitioner's contention, the right of the Housing Expediter to seek restitution under the Act of 1942 after termination of said Act is well settled. In view of the saving clause of the

Act of 1942,[1] "liabilities incurred prior to the lifting of controls are not thereby washed out." *Fleming* v. *Mohawk Company,* 331 U. S. 111, 119; *Woods* v. *Hills,* 334 U. S. 210, 214. The courts of appeals also are unanimously in accord. *Woods* v. *Bomboy* (C.A. 3rd), No. 10027, decided January 16, 1950, not yet reported; *Woods* v. *Wayne,* 177 F. 2d 559 (C.A. 4th); *Creedon* v. *Randolph,* 165 F. 2d 918 (C.A. 5th); *Creedon* v. *Olinger,* 170 F. 2d 895 (C.A. 5th); *Woods* v. *Brooks* (C.A. 7th), Civil No. 9589, decided October 13, 1948, not reported; *Ebeling* v. *Woods,* 175 F. 2d 242 (C.A. 8th); *Woods* v. *Richman,* 174 F. 2d 614 (C.A. 9th); *Woods* v. *Gochnour,* 177 F. 2d 964 (C.A. 9th).

2. Petitioner also urges that the district court should have considered his objections to the correctness and validity of the maximum rents applicable to his housing accommodations under the Act of 1947, even though administrative remedies had not been pursued.

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[1] Sec. 1(b), 50 U.S.C. 901(b) provides:

"The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1947, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense."

The judgment of the district court herein for damages and restitution embraced periods under both the Act of 1942 (for violations up to July 1, 1947) and the Act of 1947 (for violations on and after July 1, 1947). Any questions as to the validity of the maximum rents for periods prior to July 1, 1947, would not have been proper for consideration by the district court in view of Section 204(d) of the 1942 Act (*infra*, p. 12) committing such questions to the exclusive jurisdiction of the Emergency Court of Appeals. *Woods* v. *Hills, supra.*

The Act of 1947, by Section 204(b) (50 U.S.C. App., Supp. II, 1894(b)), adopted and maintained in effect those maximum rents "established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947." Since the exclusive jurisdiction provisions of the Price Control Act no longer were retained, the well-established and long-settled principle of exhaustion of administrative remedies prior to judicial review became applicable to attacks upon the validity of maximum rents under the Act of 1947. *Gates* v. *Woods,* 169 F. 2d 440, 442 (C.A. 4th); *Smith* v. *Duldner,* 175 F. 2d 629 (C.A. 6th); *Woods* v. *Durr,* 176 F. 2d 273 (C.A. 3rd); *Koster* v. *Turchi,* 173 F. 2d 605 (C.A. 3rd); *Babcock* v. *Koepke,* 175 F. 2d 923 (C.A. 9th); cf. *Yakus* v. *United States,* 321 U. S. 414 434; *Aircraft & Diesel Corporation* v. *Hirsch,* 331 U. S. 752, 767, 773. This long-settled rule of "judicial adminis-

tration" is applicable equally whether the administrative remedy be "exclusive" or merely "preliminary" to judicial determination. *Aircraft & Diesel Corporation* v. *Hirsch, supra,* at pp. 767, 773.

Petitioner's assertion that he is deprived of a forum in which the validity of the maximum rents under the 1947 Act can be tested (Pet. 8) is wholly without merit. It is noted that petitioner carefully avoids mention of the administrative procedure open for review by the Housing Expediter of attacks upon the validity of rent regulations and orders under the Act of 1947 (Rent Procedural Regulation 1, 12 F.R. 5916) and of its failure to pursue such procedures. The short answer to an attempted self-selection of forums which avoids orderly procedures was stated by Mr. Justice Rutledge in *Bowles* v. *Willingham,* 321 U. S. 503, at p. 527: "Accordingly, by declining to take the plain way opened to her, more convenient though that may have been, and taking her misconceived remedy by another route, she has arrived where she might well have expected, at the wrong end."

Aside from the foregoing, there is no restriction in the Act against judicial review, and there is nothing in the legislative history suggesting that Congress intended to bar persons aggrieved by the impact of the Act or regulations from resort to the courts for relief. Cf. *Stark* v. *Wickard,* 321 U. S. 288, 307-308; *Estep* v. *United States,* 327 U. S. 114, 120. That being so, general federal jurisdiction

would appear to exist here for the protection of individual rights from administrative rulings beyond the limit of statutory authority. *Stark* v. *Wickard, supra,* pp. 309-310. In accord with these principles, the Expediter has consistently taken the view that landlords complaining of the effect of the Act have the right to judicial review. In no instance has any court refused to accept jurisdiction in such cases on the ground that the Act did not confer it.

3. Finally, petitioner asserts that the district court erred in not permitting the introduction of "evidence of equities" in response to the Expediter's request for the equitable relief of restitution (Pet. 8). The "evidence of equities" to which petitioner refers apparently relates to assertions made in the petition herein that "the amounts being charged by him were reasonable and that the tenants were satisfied and never made demand for restitution and did not want restitution . . . that special services and equipment were furnished to the tenants at their request at an expense to him" . . . (Pet. 5-6).

These contentions are equally without merit. First, any question as to the "reasonableness" of the maximum rent is within the scope of administrative review and is prematurely made in the judicial proceeding. Second, the tenants' failure to prosecute their claims and the alleged lack of desire on their part for restitution cannot preclude the Housing Expediter from vindicating the public

interest by compelling restoration of illegal gains. *Porter* v. *Warner Co.*, 328 U. S. 395, 400; *Ebeling* v. *Woods*, 175 F. 2d 242, 245 (C.A. 8th); *Creedon* v. *Randolph*, 165 F. 2d 918, 919 (C.A. 5th); *Bowles* v. *Skaggs*, 151 F. 2d 817, 821 (C.A. 6th).

Finally, it is clear that addition of services and equipment beyond that called for by the original rental agreements did not, without prior authority, entitle petitioner to charge higher than maximum rentals, nor provide a basis for special consideration by the trial court. In this instance, as in others heretofore discussed, petitioner seeks to gain by avoiding the obligation to pursue orderly procedures and remedies that were open to him. The appropriate rent regulation (Controlled Housing Rent Regulation, 12 F.R. 4331) contains a number of grounds for adjustment of maximum rents in recognition of increased services and equipment, and on other bases (*infra*, pp. 17-18). But the petitioner made no effort to apply for and obtain authority to adjust rents upon the basis of any additional benefits he may have offered to the tenants.

In the absence of any proceeding before the Housing Expediter, it cannot be assumed that that official would have failed in the performance of his duties in fairly administering the requirements of the statute and regulations thereunder as to the relief to which petitioner may have been legally entitled. *Yakus* v. *United States*, 321 U. S. 414, 434. If, after exhausting his administrative reme-

dies, petitioner believed that the Housing Expediter had failed to accord him the full measure of his rights, ample opportunity would then have been present to obtain a review of the administrative action in the district court. *Woods* v. *Durr*, 176 F. 2d 273, 277 (C.A. 3rd).

CONCLUSION

The decision of the court below is clearly correct. There is no conflict of decisions, and further review is not warranted. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted,

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APRIL, 1950

APPENDIX

1. The pertinent provisions of the Emergency Price Control Act of 1942, as amended (56 Stat. 23; 58 Stat. 632; 59 Stat. 306; 60 Stat. 664; 50 U.S.C. App. 901 et seq.)

Section 204(d) * * * The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

Section 205(a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a

permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Section 205(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In any action under this subsection, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however,* That such amount shall be the amount of the overcharge or overcharges if the defendant proves that the violation of the regulation, order, or price schedule in question was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "over-charge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maxi-

mum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.

* * * * *

2. The pertinent provisions of the Housing and Rent Act of 1947, as amended (61 Stat. 193, 50 U.S.C. App., Supp. II, 1881 et seq., as amended by the Act of February 27, 1948, 62 Stat. 37, the Act of March 30, 1948, 62 Stat. 93, and Public Law 31, 81st Cong., 1st Sess., approved March 30, 1949) are as follows:

Section 204(b)(1) Subject to the provisions of paragraphs (2) and (3) of this subsection, and subsections (h) and (i), during the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommo-

dations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order, make such individual and general adjustments in such maximum rents in any defense-rental area or any portion thereof, or with respect to any housing accommodations or any class of housing accommodations within any such area or any portion thereof, as may be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title: * * *.

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment (or shall be liable to the United States as hereinafter provided), for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided,* That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court

of competent jurisdiction within one year after the date of such violation: *Provided,* That if the person from whom such payment is demanded, accepted, or received either fails to institute an action under this section within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the United States may institute such action within such one-year period. If such action is instituted, the person from whom such payment is demanded, accepted, or received shall thereafter be barred from bringing an action for the same violation or violations. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same person prior to the institution of the action in which such judgment was rendered.

Section 206(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the United States may make applica-

tion to any Federal, State, or Territorial court of competent jurisdiction for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

3. Section 825.5(a) of the Housing Expediter's Controlled Housing Rent Regulation (12 F.R. 4331) provides, in pertinent part, as follows:

Section 825.5(a) *Adjustments and other determinations.*

* * * * *

Section 825.5(a) *Grounds for increase of maximum rent.* Any landlord may file a petition for adjustment to increase the maximum rent otherwise allowable only on the grounds that:

(1) *Major capital improvement after effective date.* There has been on or after the effective date of the Rent Regulation for Housing, issued pursuant to the Emergency Price Control Act of 1942, as amended, a substantial change in the housing accommodations by a major capital improvement as distinguished from ordinary repair, replacement, and maintenance or a substantial increase in the services, furniture, furnishings, or equipment, and the rent on the maximum rent date was fixed by a lease or other rental agreement which was in force at the time of such change or increase.

(2) *Change prior to maximum rent date.* There was, on or prior to the maximum rent date, a sub-

stantial change in the housing accommodations by a major capital improvement, as distinguished from ordinary repair, replacement, and maintenance or a substantial increase in the services, furniture, furnishings, or equipment, and the rent on the maximum rent date was fixed by a lease or other rental agreement which was in force at the time of such change or increase.

(3) *Substantial increase in space, services, furniture, furnishings or equipment.* There has been a substantial increase in the services, furniture, furnishings, or equipment provided with the housing accommodations since the date or order determining its maximum rent or a substantial increase in the living space since June 30, 1947. No increase in the maximum rent shall be ordered on the ground set forth in this paragraph (a) (3) unless the increase in services, furniture, furnishings or equipment occurred with the consent of the tenant or while the accommodations were vacant: *Provided,* That an adjustment may be ordered, although the tenant refuses to consent to the increase in services, furniture, furnishings or equipment, if the Expediter finds that such increase (i) is reasonably required for the operation of a multiple dwelling structure or other structure of which the accommodations are a part or (ii) is necessary for the preservation or maintenance of the accommodations.

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